

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ERITREAN ASSOCIATION OF GREATER SEATTLE,

Plaintiff,

V.

HENOCK TECKLE GEBREKIDAN et al.

Defendant.

CASE NO. 3:24-cv-05517-DGE

ORDER ON MOTION TO STRIKE
(DKT. NO. 64)

I INTRODUCTION

This matter comes before the Court on Plaintiff's motion to strike Defendants' counterclaims, prayer for relief, and affirmative defenses. (Dkt. No. 64.) For the foregoing reasons, the motion is GRANTED IN PART AND DENIED IN PART.

II BACKGROUND

Plaintiff filed its first amended complaint on August 21, 2024. (Dkt. No. 22.) On October 18, 2024, Defendants filed an answer that included six affirmative defenses:

1. The Plaintiff has failed to state a claim upon which relief can be granted.

- 1 2. Consent
- 2 3. License
- 3 4. Lack of Damage
- 4 5. Lack of Knowledge
- 5 6. No intent

6 (Dkt. No. 36 at 19–20.) The answer also included counterclaims for defamation and abuse of
7 process. (*Id.* at 17–29.) Plaintiff moved to dismiss the two counterclaims. (Dkt. No. 43.) The
8 Court granted the motion, finding that the factual allegations in the Complaint are privileged
9 under Washington state law. (Dkt. No. 55 at 7–11.) Plaintiff also moved to strike Defendants’
10 affirmative defenses. (Dkt. No. 44.) The Court granted the motion, striking the first affirmative
11 defense without leave to amend and the second through sixth affirmative defenses with leave to
12 amend. (Dkt. No. 56 at 6.)

13 Defendants subsequently filed a motion to amend their affirmative defenses pursuant to
14 the Court’s order, requesting to add the affirmative defenses of free speech and self-defense.
15 (Dkt. No. 57.) Plaintiff did not respond, and the Court granted the motion to amend. (Dkt. No.
16 60.) Defendants filed the amended answer, which once more included the previously dismissed
17 counterclaims for defamation and abuse of process. (Dkt. No. 62.) Plaintiff subsequently moved
18 to strike the counterclaims and amended defenses, arguing that Defendants continue to assert
19 affirmative defenses that are “not recognized under the law” and pointing out that the Court
20 already dismissed Defendants’ counterclaims. (Dkt. No. 64 at 6.)

21 III DISCUSSION

22 A. Legal Standard

1 Rule 12(f) provides that a “court may strike from a pleading an insufficient defense or
2 any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “Rule
3 12(f) motions to strike are generally disfavored because the motions may be used as delay tactics
4 and because of the strong policy favoring resolution on the merits.” *White v. Univ. of*
5 *Washington*, No. 2:22-CV-01798-TL, 2023 WL 3582395, *2 (W.D. Wash. May 22, 2023). “The
6 key to determining the sufficiency of pleading an affirmative defense is whether it gives plaintiff
7 fair notice of the defense.” *Wyshak v. City Nat. Bank*, 607 F.2d 824, 827 (9th Cir. 1979). As
8 with the other Rule 12 provisions, Rule 12(f) must be construed alongside the general pleading
9 standards of Rule 8. *See* Fed. R. Civ. P. 8(b)(1)(A) (“In responding to a pleading a party must:
10 state in short and plain terms its defenses to each claim asserted against it”), 8(c)(1) (“In
11 responding to a pleading, a party must affirmatively state any avoidance or affirmative
12 defense[.]”).

13 Thus, the Court assesses whether Defendants’ affirmative defenses provide a “short and
14 plain statement” that affords sufficient fair notice of the affirmative defense and the grounds
15 upon which it rests. *See Grande v. U.S. Bank Nat’l Ass’n*, No. C19-333 MJP, 2020 WL
16 2063663, **1–2 (W.D. Wash. Apr. 29, 2020); *Smith v. Bank of New York Mellon*, No. C19-
17 0538-JCC, 2019 WL 3428744, *1 (W.D. Wash. July 30, 2019); *White*, 2023 WL 3582395, at *5.
18 “Detailed factual allegations are not required—simply ‘[p]leading enough factual content to
19 identify the factual grounds on which an affirmative defense rests is adequate to provide fair
20 notice’ of the affirmative defenses to Plaintiff and the Court.” *White*, 2023 WL 3582395 at *7
21 (quoting *Rosen v. Masterpiece Mktg. Grp., LLC*, 222 F. Supp. 3d 793, 802 (C.D. Cal. 2016)).
22 “[A] party’s mere reference to a legal doctrine or statutory provision without specifying the legal
23 grounds and setting forth the elements of the defense does not provide sufficient notice.”
24

1 *Guirguis v. U.S. Bank Nat'l Ass'n as Tr. for GSR Mortg. Loan Tr. 2006-4F Mortg. Pass-Through*
 2 *Certificate Series 2006-4F*, No. C18-1456-JCC, 2021 WL 779111, *2 (W.D. Wash. Mar. 1,
 3 2021).

4 **B. Discussion**

5 First, the Court STRIKES Defendants' counterclaims; the Court already dismissed these
 6 exact claims after full briefing by the Parties. (See Dkt. No. 55.) The Court directs the Parties to
 7 its prior order for discussion thereon and admonishes Defendants for frivolously repleading
 8 claims dismissed by the Court. (*Id.* at 7–11.) Likewise, the Court STRIKES Defendants'
 9 prayers for relief based upon these counterclaims. (See Dkt. No. 62 at 26–27.)

10 As to the affirmative defenses, an affirmative defense “is an assertion raising new facts
 11 and arguments that, if true, would defeat the plaintiff’s claim, *even if the allegations in the*
 12 *complaint are true.*” *Ramirez v. Olympic Health Mgmt. Sys., Inc.*, No. CV-07-3044-EFS, 2009
 13 WL 1107243, *4 (E.D. Wash. Apr. 21, 2009) (emphasis added). Defendants’ second and third
 14 affirmative defenses—“express consent” and “license”—are not affirmative defenses under
 15 Washington law. Defendants do not dispute this and otherwise acknowledge such defenses
 16 “have not been used in a diversity case.” (See Dkt. No. 68 at 6.) Accordingly, the Court
 17 STRIKES the second and third affirmative defenses. Plaintiff next asserts that “Defendants’
 18 fourth, fifth, and sixth affirmative defenses for lack of damage, knowledge, and intent are not
 19 recognized affirmative defenses because they are admitted elements of Plaintiff’s claims.” (Dkt.
 20 No. 64 at 14.) Plaintiff is correct. Negating the element of a claim is not an affirmative defense.
 21 The elements of a claim are what a plaintiff must prove to establish liability—for example, in a
 22 simple tort suit: duty, breach, causation, and damages. An affirmative defense, if proven, defeats
 23 liability *even if* all the elements of a claim are established. Accordingly, to the extent that
 24

1 Defendants plan to argue that there was no damage, no knowledge, and no intent, those
2 arguments are not affirmative defenses but rather negate the elements of Plaintiff's claims.¹
3 Defendants' claim of self-defense *is* an affirmative defense. Thus, the Court STRIKES
4 Defendants' fourth, fifth, and sixth affirmative defenses because they restate claim elements.

5 **IV CONCLUSION**

6 Accordingly, the motion to strike (Dkt. No. 64) is GRANTED IN PART AND DENIED
7 IN PART. The Court STRIKES Defendants' counterclaims and STRIKES Defendants' second,
8 third, fourth, fifth, and sixth affirmative defenses. The first and seventh affirmative defenses
9 remain.

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11 Dated this 10th day of June, 2025.

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David G. Estudillo
United States District Judge

¹ Defendants may, of course, argue lack of damage, knowledge, and intent—these arguments are simply not affirmative defenses.